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### REMARKS

In the Office Action, the Examiner noted that claims 1-32 are pending in the application and that claims 1-8, 13-24, 29, and 32 are rejected. By this response, claims 1, 16, and 32 are amended. In view of the above amendments and the following discussion, Applicants submit that none of the claims now pending in the application are anticipated under the provisions of 35 U.S.C. §102. Thus, Applicants believe that all of these claims are now in condition for allowance.

### AMENDMENTS TO CLAIMS

In the Office Action, the Examiner states that "Applicants are challenged to incorporate such statement into the claims to place the application in a favorable condition for allowance." (Office Action, pg. 10). In response, the Applicants have herein amended claims 1, 16, and 32 to include the limitation "said respective first buffer utilization level and said second buffer utilization level tending to increase as respective data rates to said plurality of first buffers and said second buffer exceed respective data rates from said plurality of first buffers and said second buffer", as requested by the Examiner. Support for this amendment is at least found in the Specification, pg 3, lines 10-24. No new matter has been entered. As such, in view of the above amendments and the following discussion, Applicants submit that all of these claims are now in condition for allowance.

### ALLOWABLE SUBJECT MATTER

The Examiner has objected to dependent claims 9-12, 25-28, and 30-31 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form. The Applicants thank the Examiner for indicating allowable subject matter but believe that amended independent claims 1 and 16, from which each of these dependent claims depends, are allowable over the prior art of record for the reasons set forth below. Thus, Applicants respectfully request that the objection to claims 9-12, 25-28, and 30-31 be withdrawn.

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### **REJECTION OF CLAIMS UNDER 35 U.S.C. §102**

The Examiner rejected claims 1-8, 13-24, 29 and 32 as being anticipated by Kinrot (United States patent 6,574,193, issued June 3, 2003). The rejection is respectfully traversed.

More specifically, the Examiner stated that Kinrot discloses an apparatus comprising "a plurality of encoders (22) for encoding respective sampled audio streams to produce respective encoded streams...a plurality of first buffers (28), for receiving respective encoded streams and forming therefrom respective sequences of transport cells, each of said transport cells comprising a portion of said respective encoded audio stream...each of said first buffers having associated with it a respective first buffer utilization level...; and a second buffer (30), for receiving and forwarding to a communications channel said sequences of transport cells...said second buffer having associated with it a second buffer utilization level...." (Office Action, p. 2-3). The Examiner concluded that Kinrot anticipates Applicants' invention as recited in claims 1-8, 13-24, 29 and 32. The Applicants respectfully disagree.

Kinrot generally teaches an encoding apparatus operable to receive data and process data for transmission through an asynchronous transfer mode network. (Kinrot, Abstract). Kinrot, however, does not teach each and every element of Applicants' invention as recited in independent claim 1. Namely, Kinrot does not teach or suggest the limitation of "a second buffer, for receiving and forwarding to a communications channel said sequences of transport cells, said second buffer having associated with it a second buffer utilization level".

The Examiner contends that Kinrot discloses "a second buffer (30)...said second buffer having associated with it a second buffer utilization level". The Applicants maintain that as taught in Kinrot, however, element 30 is an asynchronous transfer mode (ATM) multiplexer. An ATM multiplexer for combining data for transmission over a communications channel is simply not a buffer for storing data prior to multiplexing of the stored data for transmission over a communications channel. Nowhere in Kinrot is there any teaching or suggestion of a second buffer having a second buffer utilization

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level, as taught in Applicants' claim 1. As such, Applicants maintain that an ATM multiplexer, as taught in Kinrot, is simply not a buffer, as taught in Applicants' invention.

More specifically, Kinrot teaches that "[t]he cell queue length, or fill, in each of queues 28 varies as a function of...the individual and collective cell output rate from multiplexer 30". (Kinrot, Column 7, Lines 21-25). In other words, Kinrot teaches the adjustment of the queue size in response to changes in the cell rate that is output from the ATM multiplexer (element 30). As taught in Kinrot, however, the ATM multiplexer monitors only its output data rate in order to set the queue size. Nowhere in Kinrot is there any teaching, showing, or suggestion of monitoring an input data rate of the ATM multiplexer.

Therefore, an ATM multiplexer having a cell output rate, as taught in Kinrot, is simply not a second buffer having a second buffer utilization level, as taught in Applicants' claim 1. Furthermore, nowhere in Kinrot is there any teaching, showing, or suggestion of a second buffer having a second buffer utilization level, as taught in Applicants' claim 1. As such, Applicants maintain that Kinrot does not teach each and every element of Applicants' invention as taught in claim 1.

Furthermore, in the Office Action the Examiner states that "Applicants are challenged to incorporate such statement into the claims to place the application in a favorable condition for allowance." (Office Action, pg. 10). For purposes of expediting allowance of the present Application, the Applicants have herein amended claims 1, 16, and 32, in accordance with the Examiner's recommendation, to include the following limitation: "said respective first buffer utilization level and said second buffer utilization level tending to increase as respective data rates to said plurality of first buffers and said second buffer exceed respective data rates from said plurality of first buffers and said second buffer."

As such, Kinrot does not teach each and every element of Applicants' invention as recited in amended claim 1. Namely, Kinrot does not teach or suggest the limitation of "said respective first buffer utilization level and said second buffer utilization level tending to increase as respective data rates to said plurality of first buffers and said second buffer exceed respective data rates from said plurality of first buffers and said second buffer". Specifically, Applicants' amended claim 1 recites:

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An apparatus, comprising:

a plurality of encoders for encoding respective sampled audio streams to produce respective encoded streams;

a plurality of first buffers, for receiving respective encoded streams and forming therefrom respective sequences of transport cells, each of said transport cells comprising a portion of said respective encoded audio stream, each of said first buffers having associated with it a respective first buffer utilization level; and

a second buffer, for receiving and forwarding to a communications channel said sequences of transport cells, said second buffer having associated with it a second buffer utilization level; wherein

each of said encoders adapting an encoding fidelity level in response to at least one of said respective first buffer utilization level and said second buffer utilization level, said respective first buffer utilization level and said second buffer utilization level tending to increase as respective data rates to said plurality of first buffers and said second buffer exceed respective data rates from said plurality of first buffers and said second buffer.

[Emphasis added.]

Kinrot simply teaches an ATM multiplexer having a cell output rate. Nowhere in Kinrot is there any teaching, showing, or suggestion of respective first and second buffer utilization levels tending to increase as respective data rates to first and second buffers exceed respective data rates from the first and second buffers, as taught in Applicants' claim 1. Therefore, Kinrot does not teach each and every element of Applicants' invention as taught in claim 1.

"Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim." Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 U.S.P.Q. 481, 485 (Fed. Cir. 1984) (emphasis added). Since Kinrot does not teach that the respective first and second buffer utilization levels tend to increase as respective data rates to the plurality of first buffers and second buffer exceed respective data rates from the plurality of first buffers and second buffer, Kinrot fails to disclose each and every element of the claimed invention, as arranged in Applicants' claim 1. Therefore, the Applicants submit that independent claim 1 is not anticipated by Kinrot and, as such, fully satisfies the requirements under 35 U.S.C. §102 and is patentable thereunder.

Furthermore, independent claims 16 and 32 recite methods having features similar to those of claim 1 emphasized above. As such, Kinrot does not teach each and every element of claims 16 and 32. Specifically, Kinrot does not teach or suggest the

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identical feature of "said respective first buffer utilization level and said second buffer utilization level tending to increase as respective data rates to said plurality of first buffers and said second buffer exceed respective data rates from said plurality of first buffers and said second buffer". Therefore, the Applicants contend that claims 16 and 32 are not anticipated by Kinrot and fully satisfy the requirements of 35 U.S.C. §102.

As such, the Applicants submit that independent claims 1, 16 and 32 are not anticipated and fully satisfy the requirements under 35 U.S.C. §102 and are patentable thereunder. Furthermore, claims 2-8, 13-15, 17-24 and 29 depend, either directly or indirectly, from independent claims 1 and 16, and recite additional features thereof. As such, and for at least the same reasons discussed above, the Applicants submit that the dependent claims 2-8, 13-15, 17-24 and 29 also fully satisfy the requirements under 35 U.S.C. §102 and are patentable thereunder. Therefore, Applicants respectfully request that the rejections be withdrawn.

### CONCLUSION

Thus, Applicants submit that none of the claims presently in the application are anticipated under the provisions of 35 U.S.C. §102. Consequently, Applicants believe that all these claims are presently in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring any adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Mr. Eamon J. Wall, Esq. at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

1/28/05

Respectfully submitted,



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